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Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B04

PLR-133014-11

Date:

April 6, 2012

Parent =

Newco =

Seller =

Subsidiary =

Target =

Target Sub 1 =

Target Sub 2 =

PLR-133014-11

Target Sub 3 =

Target Sub 4 =

Target Sub 5 =

Target Sub 6 =

Target Sub 7 =

Target Sub 8 =

Target Sub 9 =

Target Sub 10 =

Target Sub 11 =

Target Sub 12 =

Target Sub 13 =

PLR-133014-11

Target Sub 14 =

Target Sub 15 =

Target Sub 16 =

Target Sub 17 =

Target Sub 18 =

Target Sub 19 =

Target Sub 20 =

Target Sub 21 =

Target Sub 22 =

Target Sub 23 =

Target Sub 24 =

PLR-133014-11

Target Sub 25 =

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Target Sub 28 =

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Target Sub 30 =

Target Sub 31 =

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Target Sub 115 =

Target Sub 116 =

Target Sub 117 =

Target Sub 118 =

Target Sub 119 =

Target Sub 120 =

Target Sub 121 =

Target Sub 122 =

Acquired Sub =

Stock Exchange =

Industry =

Segment A =

Segment B =

PLR-133014-11

Business C =

Asset =

Intellectual Property =

Month =

Year 1 =

Year 2 =

Year 3 =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Submission Date =

Acquisition Date =

a =

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Dear :

This letter responds to your August 1, 2011 request, submitted by your authorized representative, for rulings regarding certain federal income tax consequences of the Proposed Transaction (defined below). The information submitted in that request and in later correspondence is summarized below.

#### **SUMMARY OF FACTS**

Parent is the common parent of an affiliated group of corporations filing a consolidated return (the “Parent Group”). Parent’s common stock is publicly traded on Stock Exchange, as well as other exchanges. The Parent Group operates predominantly in Industry, which is comprised of Segment A and Segment B.

Seller is a direct wholly-owned subsidiary of Parent and is a member of the Parent Group. Seller is a holding company and is engaged, indirectly through its subsidiaries, in Segment A.

Subsidiary is an indirect wholly-owned subsidiary of Parent and is a member of the Parent Group. Subsidiary is engaged directly in Segment B.

Seller owns all of the outstanding common stock of Target, a member of the Parent Group. Target also has outstanding two classes of market auction preferred stock that is described in section 1504(a)(4) (the “Target Preferred Stock”). The Target Preferred Stock was issued in Month of Year 1 to unrelated third-party investors for funding purposes. Target is engaged directly in Business C.

The predecessor to Target was formed in Year 2 and its assets were acquired by Target on Date 1 pursuant to a forward subsidiary merger intended to qualify for nonrecognition treatment under section 368(a)(2)(D). On Date 2, Parent contributed all of Target’s then outstanding common stock to Subsidiary. On Date 3, Target issued an additional a shares of its common stock to Parent for \$b. On Date 4, Parent transferred all of its recently purchased a shares of Target common stock to Seller in exchange for c shares of Seller common stock (the “Parent Intercompany Transfer”), and Subsidiary transferred d shares of its Target common stock (representing e% of Target’s then outstanding common stock) to Seller in exchange for f shares of Seller Series A preferred stock (the “Subsidiary Intercompany Transfer” and together with the Parent Intercompany Transfer, the “Intercompany Transfers”). Immediately following the Intercompany Transfers, Seller owned g% of Target’s common stock and Subsidiary owned h% of Target’s common stock.

Parent and Subsidiary intended that the Intercompany Transfers qualify for nonrecognition treatment under section 351(a) and the transfers were reported as such on the Parent Group’s Year 3 federal income tax return. If it were determined that the Subsidiary Intercompany Transfer did not qualify for nonrecognition treatment, Subsidiary would have recognized gain of approximately \$i, which would not have been taken into account pursuant to Treas. Reg. § 1.1502-13.

On Date 5, Target issued an additional j shares of its common stock to Seller for \$k. On Date 6, Subsidiary sold all l shares of Target common stock it held (representing approximately m% of Target’s then outstanding common stock) to Seller for approximately \$n (the “Intercompany Sale”). Subsidiary recognized gain of approximately \$o on the Intercompany Sale, but it was not taken into account pursuant to Treas. Reg. § 1.1502-13.

As a result of the foregoing transactions, Seller currently owns all of Target's p shares of outstanding common stock.

Target has a number of direct and indirect wholly-owned subsidiaries: Target Sub 1 through Target Sub 122. Target's direct and indirect wholly-owned subsidiaries existing on the Submission Date and any such subsidiaries that are formed between the Submission Date and the date of the Exchange (described below) that are domestic corporations for federal income tax purposes and for which elections under section 338(h)(10) are expected to be made are referred to herein collectively as the "Indirectly Transferred Target Subs", and individually, as an "Indirectly Transferred Target Sub." A section 338(h)(10) election is not intended to be made for Acquired Sub, all of the outstanding stock of which was acquired by Target Sub 29 on Acquisition Date. Each of Target Subs 1 through 122 (described below) is a member of the Parent Group.

Each of Target Subs 1 through 26, Target Sub 28, Target Subs 30 through 32, Target Sub 34, and Target Subs 40 through 42 is engaged directly in Business C.

Target Sub 27 is a holding company for Target Sub 46, which is engaged directly in Business C.

Target Sub 29 is a holding company for Acquired Sub, which is engaged directly in Business C.

Target Sub 33 is a holding company for Target Sub 47, which is engaged directly in Business C.

Target Sub 35 is a holding company for Target Sub 48, which is in turn a holding company for Target Subs 49 through 93, each of which is engaged directly in Business C.

Target Sub 36 is a holding company for Target Sub 94, which is in turn a holding company for Target Sub 95, which is in turn a holding company for Target Sub 96, which is in turn a holding company for Target Subs 97 through 106, each of which is engaged directly in Business C.

Target Sub 37 is a holding company for Target Sub 107, which is in turn a holding company for Target Sub 108, which is in turn a holding company for Target Sub 44 and Target Subs 109 through 117, each of which is engaged directly in Business C.

Target Sub 38 is a holding company for Target Sub 118, which is engaged directly in Business C.

Target Sub 39 is a holding company for Target Subs 119 through 121, each of which is engaged directly in Business C.



Target Sub 45 is a holding company for Target Sub 122, which is engaged directly in Business C.

In addition to its tangible assets (the value of which principally relates to Asset), Target owns (or will own as of the date of the Exchange described below) intangible assets, which will include the Intellectual Property and may include purchase contracts, licenses, favorable financing, workforce in place, computer software, information base, customer-based intangibles, supplier-based intangibles, knowhow, goodwill, and going concern value, as well as other intangible assets yet to be identified.

Newco is a newly organized corporation created by Seller to participate in the Proposed Transaction (described below). Newco is authorized to issue both common stock and preferred stock. As a result of the Proposed Transaction, Newco will own all of the common stock of Target.

### **PROPOSED TRANSACTION**

For what are represented to be valid business reasons, Parent plans to exit its investment in Business C. As part of this plan, Parent and Seller each will adopt a plan of divestiture of the Business C operations conducted by Target, the Indirectly Transferred Target Subs, and the Acquired Sub (collectively, the “Plan of Divestiture”) pursuant to which Parent will cause Seller to dispose of Target through the following Proposed Transaction. In accordance with the Plan of Divestiture, Parent and Seller have taken, or will take, the following series of steps comprising an integrated transaction (collectively, the “Proposed Transaction”):

- (i) On Date 7, Seller formed Newco with a minimal amount of capital and, on Date 8, an initial registration statement was filed with the Securities and Exchange Commission (the “SEC”) with respect to the Newco common stock.
- (ii) Pursuant to an Assignment of Intellectual Property Agreement (the “Assignment Agreement”), Parent will transfer to Target its entire right, title, and interest, both statutory and at common law, in the Intellectual Property, all of which relates to Business C.
- (iii) Seller will enter into a binding contractual agreement (the “Exchange Agreement”) with Newco to transfer all of Target’s common stock to Newco, contingent on the execution of a firm commitment underwriting agreement with the underwriters.
- (iv) The Newco registration statement will be finalized and thereafter declared effective by the SEC.

- (v) Prior to the Exchange (as described in step (vii) below), Target will distribute to Seller one or more intercompany notes (the “Target Notes”) and/or cash in an amount not to exceed \$g.
- (vi) Seller will execute a firm commitment underwriting agreement with the underwriters, pursuant to which Seller will be obligated to effect the sale of Newco common stock in the Initial Public Offering (as described in step (viii) below). In addition, Seller may enter into one or more binding contractual agreements to dispose of additional Newco common stock pursuant to one or more privately negotiated sales (such sales, the “Private Placement”).
- (vii) Pursuant to the Exchange Agreement, Seller will transfer 100% of Target’s common stock to Newco in exchange for the issuance by Newco to Seller of preferred stock (the “Newco Preferred Stock”) and additional shares of Newco common stock (the “Exchange”). Newco will not then have any stock or securities issued or outstanding other than its common stock and the Newco Preferred Stock. The Newco Preferred Stock will be nonvoting, nonconvertible, and mandatorily redeemable and is expected to have a liquidation preference of at least \$r. Parent and Newco will enter into the appropriate contractual arrangements, including a tax matters agreement and any other transitional and service agreements customary, proper, or otherwise advisable in these circumstances.
- (viii) In accordance with the firm commitment underwriting agreement and any other binding contractual agreement executed in step (vi) above, Seller will sell to the underwriters for cash, for resale to the public (the “Initial Public Offering”), and to the purchasers in any Private Placement, in the aggregate more than 20% of the Newco common stock acquired in step (vii) above (collectively, the “Initial Sales”). Newco will neither sell any stock to the public in the Initial Public Offering or to any purchaser via Private Placement nor receive any funds from the public or from any purchaser in exchange for stock in connection with the Initial Sales. The Initial Sales will be completed within approximately s business days of the completion of step (vii). Except for the transfer of minimal capital in step (i) and the transfer of Target common stock in step (vii), no money or other property will be transferred to Newco in connection with the Initial Sales.
- (ix) A timely election under section 338(h)(10) with respect to Newco’s acquisition of the Target common stock in the Exchange will be made by or on behalf of Seller and Newco. Timely elections under section 338(h)(10) will also be made with respect to the deemed acquisitions of the stock of each of the Indirectly Transferred Target Subs.
- (x) Parent will make a timely election in accordance with Treas. Reg. § 1.1502-13(f)(5)(ii)(E) to permit Seller to recognize loss pursuant to Treas. Reg. § 1.1502-13(f)(5)(ii)(C) on the deemed liquidation of old Target in connection with

the election under section 338(h)(10) with respect to Newco's acquisition of the Target common stock (the "Deemed Liquidation").

- (xi) Within t months after completion of step (viii), Seller will undertake one or more follow-on public offerings, privately negotiated sales, and/or alternative or additional transactions (the "Additional Transactions") to dispose of Newco stock that, together with the Initial Sales, will reduce the Parent Group's direct and indirect ownership of Newco stock to less than 50% of the value of Newco stock (this threshold of stock ownership as it pertains to Newco stock shall hereinafter be referred to as "less than 50%" or "below 50%").
- (xii) Within u months after completion of step (viii), Seller will undertake one or more Additional Transactions to dispose of Newco stock that, together with the Initial Sales, will reduce the Parent Group's direct and indirect ownership of Newco stock to 20% or less of the vote and value of Newco stock (without regard to any stock described in section 1563(c)(1)(A)) (this threshold of stock ownership as it pertains to Newco stock shall hereinafter be referred to as "20% or less"), and Seller thereafter intends to dispose of any remaining Newco stock.

The Proposed Transaction will result in Newco owning 100% of the common stock of Target after step (vii), and Seller owning less than 50% of the value of the stock of Newco within t months after step (viii). In addition, the Proposed Transaction will result in Seller owning 20% or less of the vote and value of the stock of Newco (without regard to any stock described in section 1563(c)(1)(A)) within u months after step (viii).

## **REPRESENTATIONS**

Parent has made the following representations in connection with the Proposed Transaction:

- (a) Parent and Seller plan to dispose of more than 50% of the value of Newco stock in the Proposed Transaction.
- (b) A sale of 50% or less of the value of Newco stock (after the Target common stock has been transferred by Seller to Newco) would not achieve the objectives of Parent and Seller in connection with the planned disposition of Target. In addition, Parent and Seller would not effect the Exchange and the Initial Sales without being reasonably certain, based on advice received from the underwriters, that they will be able to effect a disposition of sufficient additional shares of Newco stock to reduce the Parent Group's ownership of Newco stock below 50% through one or more Additional Transactions.
- (c) Newco and Target have not purchased, and have no plan to purchase, any stock of Parent or Seller, other than any shares of Parent common stock acquired by Target in connection with its deferred compensation program. All shares of

Parent common stock acquired under such program have been distributed, and no additional acquisitions or distributions are contemplated.

- (d) All of the common stock of Target will be acquired by Newco in a single transfer by Seller, as described in step (vii) of the Proposed Transaction.
- (e) Each class of Target Preferred Stock satisfies all of the requirements of stock described in section 1504(a)(4).
- (f) The Target Notes (if any) will constitute indebtedness of Target for federal income tax purposes.
- (g) The Newco Preferred Stock will satisfy all of the requirements of stock described in sections 1504(a)(4) and 1563(c)(1)(A).
- (h) Seller is a member of the selling consolidated group (as defined in section 338(h)(10)(B)), of which Parent is the common parent, and will be so for the taxable period that includes the date of the Exchange.
- (i) For the taxable period that includes the date on which Newco will acquire Target, Target will be a consolidated target within the meaning of Treas. Reg. § 1.338(h)(10)-1(b)(1).
- (j) Newco has been formed in step (i) of the Proposed Transaction with a nominal amount of cash solely to: (1) permit registration of its stock with the SEC; (2) enable it to enter into the Exchange Agreement described in step (iii) of the Proposed Transaction; and (3) acquire all of the common stock of Target at the closing of step (vii) of the Proposed Transaction. Except for activities incident to these actions, Newco will have no activities and will carry on no business prior to step (vii) of the Proposed Transaction.
- (k) The terms of the underwriting agreement pursuant to which Seller will sell the Newco common stock in the Initial Public Offering and the terms of any binding contractual agreements pursuant to which Seller will sell Newco common stock in any Private Placement will be determined pursuant to arm's-length negotiations with the underwriters and purchasers, respectively.
- (l) The fair market value of Target's assets will exceed its liabilities at the closing of steps (vii) and (viii) of the Proposed Transaction.
- (m) Except for any asset described in Treas. Reg. § 1.338-8(d)(2), neither Newco nor any other member of the Newco affiliated group (within the meaning of section 338(h)(5)) has any plan or intention to acquire from any target or from any direct or indirect subsidiary of any target any asset described in Treas. Reg. § 1.338-8(b)(1) (after application of Treas. Reg. § 1.338-8(b)(2)).

- (n) There is no plan or intention for Seller, Newco, or Target to cease to remain in existence as separate corporations.
- (o) Seller has no plan or intention to liquidate or to distribute Newco stock to Parent.
- (p) Newco, Target, and the Indirectly Transferred Target Subs will cease to be members of the Parent Group at the end of the day upon which more than 20% of the Newco common stock is disposed of in the Initial Sales (as described in step (viii) of the Proposed Transaction).
- (q) The transfers of Newco stock pursuant to the Initial Sales and the Additional Transactions (as described in step (viii) and step (xi), respectively, of the Proposed Transaction) will not be to persons whose ownership of Newco would be attributed to Seller pursuant to section 318. In measuring attributed ownership under section 318, there shall be taken into account all events occurring or contemplated during the period beginning with step (vii) and ending with the completion of step (xi) of the Proposed Transaction, and Newco stock shall not be attributed to Seller solely because Parent (or any other member of the Parent Group) and a person otherwise unrelated to Parent (or any other member of the Parent Group) that purchases such Newco stock, are partners in one or more of the same partnerships.
- (r) Newco has no plan or intention to dispose of the common stock of Target.
- (s) Target will have been a member of the Parent Group throughout the period beginning with Date 4, the date of the Intercompany Transfers, and ending with the completion of the Deemed Liquidation.
- (t) Parent and Seller plan to dispose of at least 80% of the vote and value of the Newco stock (without regard to any stock described in section 1563(c)(1)(A)) in the Proposed Transaction (including any Additional Transactions) within    months of the Initial Public Offering.
- (u) Immediately after all of the sales and other transfers of Newco stock described in step (viii), step (xi), and step (xii) of the Proposed Transaction, neither Parent and Newco nor Seller and Newco will be members of a controlled group as defined in section 267(f) (applied by substituting 20 percent for 50 percent). In measuring attributed ownership for purposes of applying section 267(f), there shall be taken into account all events occurring or contemplated during the period beginning with step (vii) and ending with the completion of step (xii) of the Proposed Transaction, and the constructive ownership rules of section 1563(e), as modified by section 267(f)(1)(B), shall apply in lieu of section 267(c).

- (v) The acquisition of intangible assets of Target and the Indirectly Transferred Target Subs pursuant to the elections under section 338(h)(10) in the Proposed Transaction is not being undertaken to avoid the operation of the anti-churning rules of section 197(f)(9) and Treas. Reg. § 1.197-2(h)(11).

## **RULINGS**

Based solely on the information submitted and on the representations set forth above, we rule as follows:

- (1) Assuming completion of steps (vi) through (xi) of the Proposed Transaction, Newco's acquisition of all of Target's common stock from Seller in the Exchange will be a "qualified stock purchase" within the meaning of section 338(d)(3).
- (2) Assuming completion of steps (vi) through (xi) of the Proposed Transaction, Seller and Newco will be eligible to make (or have made on their behalf) the election under section 338(h)(10) with respect to Newco's acquisition of the Target common stock in the Exchange.
- (3) Assuming an election under section 338(h)(10) is timely made with respect to its direct shareholder (whether Target or another Indirectly Transferred Target Sub, as applicable), the deemed sale of stock of an Indirectly Transferred Target Sub resulting from the deemed asset sale of the Indirectly Transferred Target Sub's direct shareholder will qualify as a "qualified stock purchase" within the meaning of section 338(d)(3).
- (4) Assuming an election under section 338(h)(10) is timely made with respect to its direct shareholder (whether Target or another Indirectly Transferred Target Sub, as applicable), the relevant selling member and the relevant acquiring member will be eligible to make (or to have made on their behalf) the election under section 338(h)(10) with respect to the qualified stock purchase of the stock of the applicable Indirectly Transferred Target Sub.
- (5) Assuming an election in accordance with Treas. Reg. § 1.1502-13(f)(5)(ii)(E) is timely made, under Treas. Reg. § 1.1502-13(f)(5)(ii)(C)(1), Seller will recognize as a corresponding item any loss or deduction it would recognize if section 331 applied to the Deemed Liquidation, subject to the limitations imposed by Treas. Reg. § 1.1502-13(f)(5)(ii)(C)(2).
- (6) Provided that neither Parent and Newco nor Seller and Newco are members of a controlled group immediately after the completion of step (xii) of the Proposed Transaction, the anti-churning rules of section 197(f)(9) and Treas. Reg. § 1.197-2(h) will not apply to any section 197(f)(9) intangible deemed acquired under section 338(h)(10) from Target or any Indirectly Transferred Target Sub. For purposes of the preceding sentence, step (xii) shall be completed no more

than u months after the Initial Public Offering; the term “controlled group” shall be as defined in section 267(f) (applied by substituting 20 percent for 50 percent); and the term “section 197(f)(9) intangible” shall be as defined in Treas. Reg. § 1.197-2(h)(1).

### **CAVEATS**

Except as expressly provided in the rulings above, no opinion is expressed or implied regarding the federal income tax treatment of the Proposed Transaction under other provisions of the Code and regulations, or the federal income tax treatment of any aspect of any transaction or item otherwise discussed or referenced in this letter. In particular, no opinion is expressed or implied regarding:

- (i) the consequences resulting from the section 338(h)(10) elections;
- (ii) whether the Target Preferred Stock or the Newco Preferred Stock constitutes preferred stock within the meaning of section 1504(a)(4);
- (iii) whether the Newco Preferred Stock is described in section 1563(c)(1)(A);
- (iv) the federal income tax treatment of the transfer of the Intellectual Property by Parent to Target pursuant to the Assignment Agreement as described in step (ii) of the Proposed Transaction;
- (v) the federal income tax treatment of the Intercompany Transfers and the Intercompany Sale; and
- (vi) the existence or amount of any loss or deduction recognized by Seller as a result of the Deemed Liquidation.

The effectiveness of this letter ruling is conditioned upon Parent, Seller, Newco, Target, and each Indirectly Transferred Target Sub agreeing, if requested, to an extension of their respective statutes of limitations on assessment with respect to any issues raised by this letter ruling provided the extension is for a period acceptable to the Service. Furthermore, rulings (1) through (5) are conditioned upon Seller owning less than 50% of the value of Newco stock within t months after the Initial Sales and ruling (6) is conditioned upon the Parent Group actually disposing of 80% or more of its direct and indirect ownership of the vote and value of the Newco stock (without regard to any stock described in section 1563(c)(1)(A)) within u months after the Initial Public Offering.

### **PROCEDURAL STATEMENTS**

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in

support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process.

This letter is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

A copy of this letter must be attached to any income tax return to which it is relevant. Alternatively, taxpayers filing their returns electronically may satisfy this requirement by attaching a statement to their return that provides the date and control number of the letter ruling.

Sincerely,

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Frances L. Kelly  
Acting Branch Chief, Branch 2  
Associate Chief Counsel (Corporate)